

City of Detroit

CITY COUNCIL

IRVIN CORLEY, JR.
DIRECTOR
(313) 224-1076

FISCAL ANALYSIS DIVISION
Coleman A. Young Municipal Center
2 Woodward Avenue, Suite 218
Detroit, Michigan 48226
FAX: (313) 224-2783
E-Mail: irvin@cncl.ci.detroit.mi.us

ANNE MARIE LANGAN
DEPUTY DIRECTOR
(313) 224-1078

TO: Councilmembers

FROM: Irvin Corley, Jr., Director

DATE: January 27, 2010

RE: Draft Correspondence with Blackboard Inc.

Due to the direction from Council at yesterday's Formal Session, our office has prepared a draft letter for Council President Pugh to send to Blackboard Inc. regarding the allegation that the city had jointly contracted with the Detroit Public Schools, which never took place.

Also attached is our original report.

Let us know if we can further assist.

DRAFT

January 27, 2010

Matthew Small, Chief Legal Officer
Blackboard Inc.
650 Massachusetts Ave. NW
Washington DC 20001-3796

Dear Mr. Small,

This letter and attached report is to clarify to you and your company that the Detroit Public Schools and the City of Detroit are two distinct public bodies and do not have any joint contractual obligations with your company.

Your company's prior letters allege otherwise and so we have had to spend time researching this matter to report back to concerned citizens who brought this to the City Council's attention. Their thought was that the city had entered into agreements without City Council authorization.

While we had our staff check with your company and found out the allegations in your letter were in error, we still want to be certain that you receive this letter and refrain further from connecting the Detroit city government with the Detroit public school system.

Sincerely,

Council President Charles Pugh
Detroit City Council

Attachments

cc: Councilmembers
Coalition to Restore Hope to DPS
11710 Cloverdale, Detroit MI 48204
Robert Bobb, Emergency Financial Manager
Detroit Public Schools
3011 West Grand Boulevard, Detroit MI 48202

City of Detroit

CITY COUNCIL

IRVIN CORLEY, JR.
DIRECTOR
(313) 224-1076

FISCAL ANALYSIS DIVISION
Coleman A. Young Municipal Center
2 Woodward Avenue, Suite 218
Detroit, Michigan 48226
FAX: (313) 224-2783
E-Mail: irvin@cncl.ci.detroit.mi.us

ANNE MARIE LANGAN
DEPUTY DIRECTOR
(313) 224-1078

TO: Councilmembers

FROM: Irvin Corley, Jr., Director *ICJ*
Anne Marie Langan, Deputy Director *mw*

DATE: January 14, 2010

RE: Concerns of Coalition to Restore Hope to DPS and a potential contractual relationship between the City of Detroit, the Detroit School Board and Blackboard Connect Inc.

At the City Council Formal Session on Tuesday January 12, citizens that are members of the Coalition to Restore Hope to DPS came with concerns about contract GS-35F-054M with Blackboard Inc. and the Detroit Public Schools. The citizens came to Council requesting an investigation because some of the documents regarding this transaction indicated that the City of Detroit was a party to this contract. There was concern that Council had not been allowed to approve this contract, which would violate the Charter.

At Council's direction our office investigated this issue. We contacted legal counsel at Blackboard Inc. who wrote the letters as well as spoke to the Detroit Public Schools Procurement Officer and Assistant Superintendent. All persons assured us that the City of Detroit was in no way a party to this contract. Blackboard Inc. was in error including the City of Detroit in their letter and copying Mayor Bing.

There are large public school districts across the country that are integrated into the municipal structure, and Blackboard confusingly lumped Detroit in that scenario, however false. Anecdotally, DPS and Blackboard have negotiated new terms and have a contract through June of 2011.

Attachments

cc: Council Divisions
Kamau Marable, Mayor's Office



**11710 Cloverdale, Suite 160
Detroit MI 48204
313.778.4393
coalitiontorestorehopetodps@yahoo.com**

December 14, 2009

Honorable Kenneth V Cockrel Jr, President
Detroit City Council
2 Woodward Avenue, Suite 1300
Detroit MI, 48226

Dear Council President Cockrel Jr:

Attached is an official complaint and demand for an investigation into Contract GSA Schedule GS-35F-054M for possible violations of Detroit City Charter Section 4-122 and Detroit City Code Section 18-5-5 subsection (a).

Background

On March 31, 2009, state appointed Emergency Financial Manager of Detroit Public Schools Robert Bobb and the City of Detroit entered into an agreement with Blackboard Incorporated (GS-35F-054M). On October 28, 2009, Mr. Bobb and the Mayor's Office received a letter (attachment 1) from Blackboard Inc.'s Chief Legal Officer informing them that they hadn't paid an outstanding balance of \$810,000.

On November 3, 2009, the Mayor's Office received a letter from Blackboard Inc.'s Deputy General Counsel (attachment 2) terminating services with the Detroit Public Schools and the City of Detroit.

Power of City Council to Investigate

The Detroit City Council has the authority to investigate the Office of Mayor, Purchasing Department and subpoena the Emergency Financial Manager. Article 4-109 (attachment 3) of the Detroit City Charter titled Investigation states:

"The city council may make any investigations into the affairs of the city and conduct of any city agency."

Article 4-110 (attachment 3) of the Detroit City Charter titled Investigative Powers states:

"The city council may subpoena witnesses, administer oaths, take testimony and require the production of evidence in any matter pending before it or any of its committees. To enforce a subpoena or order for production of evidence or to impose any penalty prescribed for failure to obey a subpoena or order, the city council shall apply to the appropriate court."

This Charter provision authorizes the City Council to question the Emergency Financial Managers involvement in this matter.

Violations of Charter and Detroit City Code

Blackboard Inc.'s October 28, 2009 correspondence references the contract as a no-bid contract entered by the state appointed Emergency Financial Manager in which the City of Detroit utilized Blackboard's services. Detroit City Charter Sec. 4-122 (attachment 4) Approval of Contracts states:

"The city may not purchase or in any way procure property or the services of independent contractors without approval by resolution of the city council except as provided by ordinance."

In addition to the aforementioned Charter reference, Detroit City Code Section 18-5-5 subsection (a) (attachment 5) reads:

"The following contracts and amendments thereto shall not be entered into without city council approval; goods and services over the value of twenty-five thousand dollars (\$25,000.00); all contracts for personal services, regardless of dollar value, including contracts for services rendered by the city, its departments and agencies; and all purchases and sales of and other transfers of interest in municipal land. City Council approval of a contract or amendment shall not be deemed an approval of any renewal or extension sought to be entered pursuant to such contract. Such renewals or extensions of contracts or the exercise of an option to renew or extend a contract shall require separate city council approval. The director of purchasing division of the finance

department shall furnish the city council weekly report of all contracts for goods and services exceeding five thousand (\$5,000.00) but not exceeding twenty-five thousand dollars (\$25,000.00). The purchasing director shall furnish the city council with a quarterly report on number and dollar value contracts awarded to D-BBs, D-BSBs, D-RBs, DBMBCs and SBCs. In addition, the purchasing director shall notify city council of any provision in a contract submitted for approval which would permit, or authorize, a renewal or extension of such contract or a loan or prepayment."

The Blackboard Inc contract qualifies as the services of an independent contractor as listed in City Charter section 4-122(attachment 4). The \$810,000.00 amount in question qualifies Blackboard Inc as goods and services over the value of \$25,000.00 requirement listed in Detroit City Code 18-5-5 (attachment 5). Therefore we submit to this honorable body for investigation the following questions in addition to any other questions you choose to ask.

1. What is the involvement of the Detroit City Council in approval of GS-35F-054M?
2. What are the scope of services and deliverables in the contract?
3. What processes were put in place to monitor the services performed by Blackboard Inc?
4. How much of the \$810,000.00 is Detroit's municipal government responsible for?
5. Did the Office of Emergency Financial Manager for Detroit Public Schools share the October 28, 2009 correspondence with your honorable body?
6. Are there any additional contracts between the City of Detroit and Detroit Public Schools executed by the Mayor and Emergency Financial Manager?

In conclusion, it is important that all divisions and components of government operate with a level of transparency. Even if the \$810,000.00 balance has been paid, the question of openness and correct, Charter-compliant contract and procurement processes MUST still be answered. That is the purpose of this demand for an investigation and hearing on the Blackboard Inc. contract.

Finally, because the Office of the Mayor is listed as a subject in the Blackboard Inc. letter, we ask that your honorable body utilize your Office of Research and Analysis as well as independent legal counsel when investigating the complaint and conducting the hearings. We make this request because City of Detroit's Law Department's ability to be objective is compromised because they are subordinates to the Mayor.

Detroit City Charter section 4-121 Special Counsel (Attachment 4) empowers this honorable body to utilize independent legal counsel. This section reads as follows:

"The city council may obtain the opinion or advice of an outside attorney in any matter pending before it. Where there exists a conflict of interest between the city council and another branch of government, the

city council has the authority to retain an attorney licensed to practice law in Michigan who shall represent the city council in legal proceedings. Such attorney shall not represent the city as a municipal corporation in any legal proceeding."

We can be reached when a hearing date is scheduled by writing to:
Coalition to Restore Hope to DPS
11710 Cloverdale Street
Suite 160
Detroit MI 48204

We can also be reached by phone at (313)-778-4393 or email at coalitiontorestorehopetodps@yahoo.com.

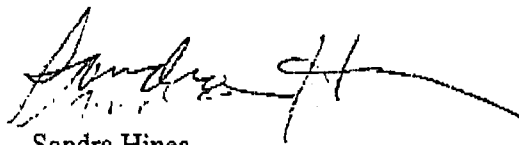
Respectfully,



Christopher White

Co-Chair

Coalition to Restore Hope to DPS



Sandra Hines

Co-Chair

Coalition to Restore Hope to DPS

cc: Honorable President Pro Tem, Councilwoman JoAnn Watson
Honorable Councilmember, Shelia Cockrel
Honorable Councilmember, Barbara Rose Collins
Honorable Councilmember, Kwame Kenyatta
Honorable Councilmember, Alberta Tinsley Talabi
Honorable Councilmember, Brenda Jones
Honorable Councilmember, Martha Reeves
Honorable Council President Elect, Charles Pugh
Honorable Council President Pro Tem Elect, Gary Brown
Honorable Councilmember Elect, Saunteel Jenkins
Honorable Councilmember Elect, Rev Andre Spivey
Honorable Councilmember Elect, James Tate
Honorable Detroit City Clerk, Janice Winfrey
Honorable Detroit Public School Board President, Carla D. Scott, M.D.
Honorable Detroit Public School Board Member At-Large, Ida Short
Honorable Detroit Public School Board Member At-Large, Rev David Murray
Honorable Detroit Public School Board Member At-Large, Marie L. Thornton
Honorable Detroit Public School Board Member At-Large, Margaret L. Betts, M.D.
Honorable Detroit Public School Board Member District 2, Otis Mathis III
Honorable Detroit Public School Board Member District 3, Annie Carter
Honorable Detroit Public School Board Member District 4, Tyrone Winfrey
Honorable Detroit Public School Board Member District 5, Anthony Adams, Esq

Honorable Detroit Public School Board Member District 6, Terry Catchings
Honorable Detroit Public School Board Member District 7, Ron Cleveland
Honorable Detroit Public School Board Member At-Large Elect, Carol Banks
Honorable Detroit Public School Board Member At-Large Elect, Lamar Lemmons
Honorable Michigan House of Representatives Member District 5, Bert Johnson
Honorable Michigan House of Representatives Member District 11, David Nathan
Honorable Michigan House of Representatives Member District 29, Tim Melton
Honorable Michigan House of Representatives Detroit Delegation Members
Honorable Speaker of the House, Michigan House of Representatives, Andy Dillon
Honorable Senate Majority Leader, Michigan State Senate, Mike Bishop

Blackboard Inc
650 Massachusetts Avenue, NW
6th Floor
Washington, DC 20001-3796

P 202.463.4860
F 202.463.4863
blackboard.com



Blackboard

BY EMAIL AND UPS

Dr. Robert C. Bobb
Emergency Financial Manager
Office of the Emergency Financial Manager
Detroit Public Schools, City of Detroit
14th Floor Fisher Building
3011 West Grand Blvd.
Detroit, Michigan 48202

November 3, 2009

Re: FINAL TERMINATION NOTICE - Contract on GSA Schedule GS-35F-054M with
Blackboard Connect Inc. dated March 31, 2009 (the "Contract")

Dear Dr. Bobb:

As a follow up to Matthew Small's letter dated October 28, 2009, I am writing to provide you with a final confirmation that the Blackboard Connect service contracted under the above named Contract will terminate as of 5:00 pm on Wednesday November 4, 2009.

If you have sent a payment that has not acknowledged or if there is any other misunderstanding, please contact me immediately at (202) 463-4860 ext 2870 or via email at justin.tan@blackboard.com.

Sincerely,

Justin Tan
Deputy General Counsel

Cc: Teresa Gueyser, Esq.
Acting Superintendent Detroit Public Schools
3011 West Grand Blvd. - 14th Floor
Detroit, MI 48202

President Carla D. Scott, M.D.
Detroit Board of Education
7322 Second Avenue, Suite 485
Detroit, Michigan 48202-2711

Mayor Dave Bing
City of Detroit
Executive Office
Coleman A. Young Municipal Center
2 Woodward Ave., Ste. 1126
Detroit, MI 48226

Blackboard Inc.
650 Massachusetts Avenue, NW
5th Floor
Washington, DC 20001-3796
P 202.463.4860
F 202.463.4863
blackboard.com



Blackboard

BY EMAIL AND UPS

Dr. Robert C. Bobb
Emergency Financial Manager
Office of the Emergency Financial Manager
Detroit Public Schools, City of Detroit
14th Floor Fisher Building
3011 West Grand Blvd.
Detroit, Michigan 48202

October 28, 2009

Re: **TERMINATION NOTICE - Contract on GSA Schedule GS-35F-054M with Blackboard Connect Inc. dated March 31, 2009 (the "Contract")**

Dear Dr. Bobb:

It is with regret that I write to you with this letter signifying Blackboard's notice of termination to Detroit Public Schools and the City of Detroit relating to the above named Contract for the Blackboard Connect service. As I am sure you know since you personally executed the Contract, the Blackboard Connect service is a highly critical service that municipalities all over the country use to deliver time-sensitive notifications to their citizens. In this day and age, with weather, health and security events among others causing significant disruptions to municipal operations, it is more important than ever for municipalities to have the ability to deliver messages rapidly to their citizens via phone, email, SMS and TTY.

Naturally we are very aware of the financial challenges facing both Detroit Public Schools and the City of Detroit. However, your payment is now 6 months overdue and since the contract was executed with the approval of the Office of the Emergency Financial Manager we had fully expected Detroit to meet its obligations under the contract. Nevertheless, we have been attempting to work out a further accommodation on the terms of the Contract with your staff over the past several months with no success. While both Detroit Public Schools and the City of Detroit continue to utilize the Blackboard Connect service, we continue to incur the expense of providing that service and Detroit continues to disregard its obligations under the contract.

Thus, I regret to inform you that as of Wednesday November 4, 2009 at 5:00 p.m. (Eastern time), Detroit Public Schools and the City of Detroit's access to the Blackboard Connect service will be terminated.

In case there has been any miscommunication regarding Detroit Public Schools and the City of Detroit's intent with regard to the contract, Blackboard will not terminate the service if we receive the payment of \$810,000 outstanding under the contract in Blackboard's bank account in immediately available funds by 1:00 p.m. on Wednesday November 3, 2009. Absent payment received in full by such time, Blackboard will terminate the service without further notice.

We bring your attention to the contractual terms relating to the Blackboard Connect service and note in particular that following termination, Detroit Public Schools, the City of Detroit and the Office of the Emergency Financial Manager are required to (i) immediately discontinue access to

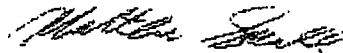
and/or use of the Blackboard Connect service; (ii) pay to Blackboard the outstanding \$810,000 plus interest due and payable under the Contract; and (iii) return all documentation and related training materials to Blackboard within a reasonable time. We hereby request Detroit Public Schools, the City of Detroit and the Office of the Emergency Financial Manager's full and immediate compliance with the foregoing. Blackboard reserves all of its rights to enforce compliance with the above terms and all other relevant terms of the Contract.

By this letter, Blackboard also notifies Detroit Public Schools, the City of Detroit and the Office of the Emergency Financial Manager that the notice address for all notices or official correspondence to Blackboard or its subsidiaries under the Contract shall be:

Blackboard Inc.
650 Massachusetts Ave NW
Washington DC 20001-3796
Attn: Matthew Small, Chief Legal Officer

We continue to value our relationship with both Detroit Public Schools and the City of Detroit and hope that we can find a productive and mutually beneficial way to work together in the future.

Sincerely,



Matthew Small
Chief Legal Officer

Cc: Teresa Gueyser, Esq.
Acting Superintendent Detroit Public Schools
3011 West Grand Blvd. - 14th Floor
Detroit, MI 48202

President Carla D. Scott, M.D.
Detroit Board of Education
7322 Second Avenue, Suite 485 ,
Detroit, Michigan 48202-2711

Mayor Dave Bing
City of Detroit
Executive Office
Coleman A. Young Municipal Center
2 Woodward Ave., Ste. 1126
Detroit, MI 48226